

A P P E N D I X

(Concerning 5 USCA 58, 69 and 70)

COURT DECISIONS	PAGE
Woodwell v. United States.....	1
Evans v. United States.....	3
United States v. Metzger.....	4
Johnston v. United States.....	5
United States v. Evans.....	6
Ward v. United States.....	7
COURT OF CLAIMS DECISION	
19 Ct. Cl. 497.....	8
OPINION OF ATTORNEY GENERAL	
19 Op. A.G. 122.....	9
DECISIONS OF COMPTROLLER GENERAL	
Numerous decisions cited.....	11

214 U.S. 82 (1908)

WOODWELL v. UNITED STATES

FACTS:

1. Woodwell was employed by Treasury Department to inspect electric light plants, at \$2000 per year.
2. At the request of the Secretary of the Interior, Woodwell was designated and ordered by the Secretary of the Treasury to perform services in connection with the installation of an electric lighting and heating plant of the Department of the Interior.
3. Woodwell was also "authorized and directed" by the Secretary of the Interior to perform such services.
4. Woodwell performed these services (897 hours) outside of his regular office hours as a Treasury employee, and during this period he also fully discharged his duties as a Treasury employee.

ISSUE: Effect of Sections 1763, 1764 and 1765 of the Revised Statutes (5 USCA 58, 69 and 70).

COURT OF CLAIMS HOLDING:

Since the facts did not make out a case of the holding by one person at the same time of two distinct offices, places, or employments, each having its own duties and its own compensation, but was merely a case of the performance of which, even if it be assumed there was authority of law therefore, nevertheless there was no "appropriation therefore explicitly stating that it was for such additional pay, extra allowance, or compensation."

SUPREME COURT:

1. "We see no reason to doubt the correctness of the reasoning and conclusions of the court below."
2. The Saunders case was cited with approval.
3. The following excerpts are from the opinion:

"Not only was there no specific provision in the appropriation for the employment and compensation of an electrical engineer to prepare plans . . . but the correspondence does not permit an inference that it was the intention of the Department of the Interior to call upon Mr. Woodwell to fill a separate and distinct office or employment that which he already held under the Government . . . " (emphasis added)

"...Presumptively, the aid which Mr. Woodwell rendered by direction of the Secretary of Treasury to the Department of the Interior was done by him and by virtue of the order and direction of his superior officer, and was not, therefore, a distinct employment. Certainly it cannot be said that Mr. Woodwell, whatever may have been the value of his services, was called upon to render a service specially required by an existing law and for the performance of which the remuneration was fixed by law. Those conclusions clearly bring that case within the prohibitions against payment contained in Section 1765, Revised Statutes ..."

Shepardization of Woodwell Case:

158 F.2d 501, (Ward v. United States), cited Woodwell case without comment.

175 F.2d 617, (Johnston v. United States), cited Woodwell case without comment.

226 U.S. 570, Evans v. United States, followed Woodwell case.

44 Ct. 556, Evans v. United States, relied upon Woodwell case.

45 Ct. 171, Evans v. United States, relied upon Woodwell case.

50 Ct. 243, Lewis v. United States, cited Woodwell case with approval.

⁰⁸
34 A.G. 493, quoted from Woodwell case.

EVANS v. UNITED STATES

226 U. S. 567 (1913)

FACTS:

1. Evans was disbursing clerk of the Department of the Interior at \$2,000 per year.
2. He was also disbursing clerk of the Architect of the Capitol at \$1,000 per year.
3. Then he was appointed by the Secretary of the Interior as a special disbursing agent, at a compensation of 3/8 of one percent of disbursements.
4. During the time he acted as special disbursing agent, Evans continued to hold the office of disbursing clerk of the Interior Department and to act as disbursing clerk of the Architect of the Capitol, and for the performance of these duties received the salary and compensation mentioned above.
5. He then presented a claim for same \$5,000 for services in connection with his job as a special disbursing agent.

COURT OF CLAIMS:

Against Evans.

SUPREME COURT:

1. Against Evans, quoting Sections 1763, 1764 and 1765 of the Revised Statutes.

2. Statement of the court:

"It seems to us that the appointment of the appellant as a 'special disbursing agent' was not an appointment to a separate and distinct office from those already held by him, but was merely an order requiring him to perform additional services in the way of disbursing public moneys. This being so, payment for the extra services is prohibited by the terms of §1765, Revised Statutes, without reference to the fact that the appellant already held offices whose salary or annual compensation amounted to more than two thousand five hundred dollars. The case is within the authority of Woodwell v. United States, 214 U.S. 82. The fact that in the present case it was understood that the appellant should have additional pay makes this case different in its circumstances, but does not render inapplicable the statutory prohibition."

UNITED STATES v. METZGER

133 F.2d 82 (1943)
Certiorari denied 320 US 741

FACTS:

1. Oswald was appointed as a court reporter for the U. S. District Court of the Territory of Hawaii.
2. A rule of court provided that he could be paid extra compensation for furnishing transcripts at twenty cents per folio.
3. Oswald refused to furnish United States with a transcript, because the United States would not agree to pay for the transcript.

PROCEDURE:

The United States petitioned for writ of mandamus to compel Reporter Oswald to furnish the transcript, and also to compel Judge Metzger to order Oswald to do so.

COURT:

1. For the United States.
2. The furnishing of the transcript is an "official service" which is an "ordinary duty" of Oswald's office, for which he cannot claim compensation in excess of his salary, even though such added compensation is attempted to be provided by a rule of court.
3. 5 USCA 70 was cited as authority for the ruling.
4. There is no appropriation of Congress providing for such added compensation for the court reporter for the Hawaiian District Court for furnishing this transcript.
5. The appropriation for stenographic services of the Department of Justice contains no "explicit statement" that any of it may be paid to official reporters as "additional compensation."

NOTE:

Oswald previously sued the United States for furnishing transcripts, and failed. Oswald v. United States, 96 F. 2d 10 (1938).

JOHNSTON v. UNITED STATES

175 F. 2d 612 (1949)

1. This case interprets 5 USCA 69 and 70.
2. The following comment is pertinent:

"There has been recognized only one exception to the flat prohibition of these statutes against extra compensation. It is held not to apply where there are two distinct offices, places or employments, each of which has its own duties and compensation, which offices may both be held by any one person at the same time" (citing United States v. Saunders, 120 U.S. 126, and United States v. Bridle, 110 U.S. 688).

3. The court held this exception had no application to the Johnston case.

4. The facts of this case are well known, and the court decision is in the office. Consequently, further comment appears unnecessary.

UNITED STATES v. EVANS

4 Mackey (D.C.) 281 (1885)

FACTS:

1. Benjamin was a foreman in charge of laborers on public grounds in the District of Columbia, under Army Engineers, at a salary of \$2000 per year.

2. While occupying the above position, Benjamin was also appointed a disbursing agent by the Secretary of War, to disburse money in connection with the erection of a building, and was paid 3/8 of one per cent on all money disbursed.

PROCEDURE:

Government sued for sum of \$3071 paid to him for his disbursement duties, relying on Section 1765 of the Revised Statutes (5 USCA 70).

HOLDING:

Against the United States.

REASON:

The duties of the two jobs were not incompatible.

EXCERPT:

"It was that evil (incompatibility) that Congress had in contemplation and provided against; and, as is said by Chief Justice Taney, if the duties are not incompatible with each other, there is no law prohibiting the duplication of duties . . . From the time of the decision in Converse v. United States, 21 How. 470, when the question was fully examined by Chief Justice Taney, down to the last echo on that subject in the case of Meigs v. United States, 19 Ct. Claims 497, that doctrine has traveled down through the courts to this hour."

NOTE:

The Court did not explain its interpretation of incompatible.

WARD v. UNITED STATES

158 F.2D 499 (1947)
Certiorari denied

FACTS:

Ward was a lawyer, and enlisted in the Navy as a yeoman. As such, he performed duties as a land title attorney in the Real Estate Division Office of the Navy in Honolulu.

PROCEDURE:

Ward sued the United States to recover the reasonable value of legal services furnished allegedly in reliance upon an implied contract.

COURT:

Against Ward for two reasons:

1. No promise can be implied on these facts.
2. The statutes relating to additional compensation for added services, "the meaning and effect of which statutes, after more than one hundred years, are apparently still debatable."

N. B.

Ward did not contend that he filled two positions at the same time. He contended that he ceased to perform duties as a yeoman, and performed only the duties of an attorney.

MEIGS v. UNITED STATES

19 Ct. Cl. 497 (1884)

FACTS:

1. General Meigs was a retired Quartermaster-General of the U. S. Army, and was drawing retired pay.
2. An appropriation act provided for the erection of a Pension Bureau building "under the supervision of General M. C. Meigs."
3. The Secretary of the Interior engaged General Meigs as superintendent, at \$10.00 per day.
4. The First Comptroller of the Treasury instructed the disbursing clerk of the Department of Interior not to pay the General.

PROCEDURE:

General Meigs brought suit to recover this pay (\$1210).

COURT OF CLAIMS:

1. For the General.
2. Section 1764 and 1765 of the Revised Statutes do not prohibit payment of this money.
3. He is not claiming extra compensation for his duties as a retired officer.
4. His civil services had no connection with his military office.
5. His designation as superintendent was only an expression of the will of Congress. .

NOTES:

1. It seems incredible that this case ever reached the Court of Claims, since the appropriation act provided for his services.
2. This case came before passage of the "dual office" law (5 USCA 62).

OPINION OF THE ATTORNEY GENERAL

19 Op. Atty. Gen. 122 (1888)

ISSUE:

Whether a United States marshal who brings home a fugitive criminal from a foreign country is entitled for such services "to compensation in excess of expenses" out of the fund appropriated "for bringing home fugitive criminals."

STATUTES INVOLVED:

Sections 1764 and 1765 of the Revised Statutes (5 USCA 69 and 70).

COMMENT BY THE ATTORNEY GENERAL:

1. The interpretations of these statutes by previous Attorney Generals are not entirely reconcilable.
2. However, the Attorney General was "relieved" from choosing sides by the decision in Converse v. United States, 21 How. 463, wherein the Court held:

Collector of Customs of Boston, whose salary as Collector of Customs exceeded \$2500 per year, was entitled to receive in addition lawful commissions for his services as purchasing agent for such supplies necessary for the light-house service as were to be used by the United States outside of his own district.

ATTORNEY GENERAL'S STATEMENT OF THE RULE:

"From these authorities it may be derived that the elements necessary to justify the payment of compensation to an officer for additional services are, that they shall be performed by virtue of a separate and distinct appointment authorized by law; that such services shall not be services added to or connected with the regular duties of the place he holds; and that a compensation, whose amount is fixed by law or regulation shall be provided in their payment."

HOLDING OF ATTORNEY GENERAL:

1. Section 5276 of the Revised Statute authorizes the payment of an agent in behalf of the United States to receive the delivery of criminals from a foreign government.
2. If a United States marshal was appointed an agent, in pursuance of this section, to go to a foreign country to take the delivery of a criminal, his services performed in pursuance of such appointment would not be a duty added to or connected with the regular duties of his office as marshal.

3. The appropriation bills provide for payment of compensation for these services, but they do not specify the amount to be paid to such agent.

a. If the amount of compensation to be paid the agent was fixed by regulation of the Department before his appointment, he is entitled to receive the amount so established.

b. If the amount was not fixed by regulation, he is not entitled to compensation beyond his expenses.

DECISIONS OF THE COMPTROLLER GENERAL

As to 5 USCA 70, the Comptroller General has made this statement repeatedly:

"That law does not prohibit a person from holding, and receiving the compensation of, two separate and distinct offices, positions, or employments, the salary or compensation of each of which is fixed by law or regulation, where the two services are not incompatible with each other." (22 Comp. Gen. 312, at 314, citing numerous cases).

The following decisions also concern this problem:

- 28 Comp. Gen. 459
- 23 Comp. Gen. 900, at 902
- 23 Comp. Gen. 275, at 277
- 21 Comp. Gen. 146
- 21 Comp. Gen. 453, at 456